

Fair Wear and Tear Guide For Landlords And Tenants

THE LAW

The House of Lords stated, "A tenant cannot be held responsible for changes to the property caused by "the reasonable use of the premise by the tenant, allowing for the ordinary operation of natural forces, i.e. the passage of time". Allowances must be made for "fair wear and tear".

The law also prevents the "betterment" at the tenant's expense – which put simply means that there's no new for old where something is damaged.

Everything has a life expectancy and will need to be replaced periodically at the landlord's expense.

What Does This Mean for Us?

We must look at the life expectancy for an item and take this into consideration when calculating deposit claims.

We must also look at the damage and assess if it is in keeping with wear and tear.

Wear and Tear:

Décor: expected life expectancy 3-5 years, dependant on:

- The items quality
- The location of the item (a hallway will have more traffic than a bedroom)
- Whether the tenant has young children/pets/or a large quantity of persons residing at the property
- Whether the Tenancy Agreement allowed smoking inside the property
- Whether the property is prone to condensation/damp

Case Study 1:

The landlord has painted the walls and ceilings in the property ready for the new tenant. Whilst most of the rooms are in good condition 2 years later when the tenant leaves, the hallway and landing have large scratches and marks on them. It looks to the check-out clerk like the tenant has scraped furniture along the walls whilst moving in and out. The clerk has also noted that there are 6 holes and screws in the upper walls that were not mentioned on the inventory, more than likely from the tenant hanging pictures on the walls.

Expected life span of décor: circa 4/5 years

Expected remaining lifespan: 2/3 Years

Because the walls will have to be filled and re-painted, the clerk can request a deposit contribution for the landlord. The claim should be for:

6x holes/screws in walls – reasonable remove and repair costs circa £30 to fill and patch up

For the redecoration of all affected walls (in this case 3 walls). A newly decorated single wall should be charged at around £40/£50. A wall within its lifespan damaged through negligence rather than fair wear and tear, should be charged at £20/£25 per wall. Fair wear and tear does not include damage made by the tenant moving their furniture in and out of the property – this should be done carefully to limit any damage. So a claim can be made in the region of $3 \times £20/£25 = £60/£75$

Case Study 2:

A tenant moves out and leaves their teenagers bedroom walls in poor condition. The walls were not newly decorated at the start of the tenancy but were all in good order. The tenant has left lots of Blu Tac residue and Sellotape marks on the walls from posters. Some of the marks have removed the paint underneath. It is obvious to the clerk that the blue tack will take some removing, and after this the wall will need touching up.

In this case, the age of the décor is irrelevant. It is not reasonable wear and tear to leave remnants of poster hangings on the landlord's walls for him/her to remove. This should be charged at a reasonable price quoted by a contractor to remove and make good. Because the wall was not newly decorated at the start of the tenancy, it would not be fair to charge the tenant the full price of repainting each affected wall, and in this case, only £20/£25 per wall can be charged, in addition to the labour charge for the removal of the residue.

CARPETS

Flattening of the carpet pile over time is wear and tear, as may be discolouration.

Stains/burns/animal damage and excessive wear will be a deposit claim – this claim will be a proportion of the full cost of the carpet, determined by:

- Manufacturers recommended life expectancy
- Quality of the carpet and underlay/subflooring.
- The age of the carpet prior to the start of the tenancy
- The expected traffic during the tenancy
- Any extenuating circumstances

Case Study 1:

Landlord fits a new hallway carpet prior to letting the property. After one year the tenant is checking out. The check-out clerk notices that there are pulls in the carpet by the internal doors, she believes that the damage has been caused by a dog scratching at the carpet. The tenant was not permitted to have pets in the property.

The carpet had cost £100 new, the manufacturer states that the carpet is of good quality and should have a 10-year life span.

Because of the mess, the whole carpet will have to be replaced before the next tenant. It would be fair that the tenant pays for the remaining 9 years of carpet life. So, they should be asked to pay £90.

WHY?

£100 divided by ten years = £10 per year

Remaining life span of carpet is 9 years

$9 \times £10 = £90$

Case Study 2:

Landlord fitted a cheap carpet in the lounge of his property 4 years ago, he paid £80 for the carpet and fitted it himself. A family have lived there for 4 years with two young children. The children spill paint on the floor, and the tenant leaves this behind when they move out. There is also some flattening of the carpet pile, and the colour has lost its vibrancy.

The manufacturer believes that the carpet should have a life span of 6 years.

The clerk can now work backwards from the £80 original cost as follows:

£80 divided by 6 years = the annual cost of the carpet (£13.33)

How many years should the carpet have left? = (2 Years – because the manufacturer said 6 years, and it has been down 4 years).

So, the claim should be £26.67 ($2 \times £13.33$) –because the carpet has to be replaced/cleaned. This cannot be seen as fair wear and tear, because it is not reasonable for the landlord to accept that the children were allowed by the tenant to paint in the lounge, and for him to have to cover the cost of this.

The flattening of the pile and loss of vibrancy will be taken to be fair wear and tear – this is because the normal use of a carpet is for people to walk on it, which will cause the pile to flatten, and the wear is not excessive. The colour has lost its vibrancy through normal sunlight and pile flattening, and so no claim can be made for this.

If an animal has been allowed during the tenancy, the carpets should always be professionally cleaned – to prevent infestations.

LAMINATE FLOORING/VINYL FLOORINGS/TILED FLOORINGS

Good quality hardwood laminate will have a longer life expectancy than cheaper versions. It is fair wear and tear for small marks to appear, and for the joints to move/lift or even crack slightly. Claims can be made against deposits for excessive marking or damage. If cheaper non-waterproof products are used in kitchens/bathrooms a clerk can expect to see water damage to joints and blisters. These should be marked as fair wear and tear due to product quality.

Vinyl flooring may have the odd small dent/nick to the surface through wear and tear, but large stains and tears should be claimed for.

Tiled floors may lose some grouting through time, and this may be considered wear and tear. Cracks and chips to tiles may be claimed for, unless the tiles appear to be poorly fitted.

Any large scratches/marks/holes etc which appear to have been caused by dragging furniture across the surface, pets scratching, paint marks or stains, should be claimed for. A contractor may be able to quote a reasonable price to repair the damage, or a proportion of the original cost can be claimed (taking into account the product original cost and quality)

Case Study 1:

A landlord has fitted a cheap wood laminate in the bathroom of his rental property. A year later his tenant is moving out, and the check-out clerk reports that the bathroom flooring is in poor order, there are large patches of flooring where the top layer of laminate is missing, and the seams are lifting.

In this case, the clerk would need the landlord to evidence that the product used was fit for purpose, before any further action could be taken. If the landlord has fitted non-waterproof laminate to the bathroom, then the tenant can not be held responsible for the damage caused through normal usage.

Case Study 2:

A landlord has fitted vinyl flooring to the kitchen of his property ready for the new rental. At the end of the tenancy 18 months later, the surface of the flooring is badly torn. The clerk believes that the tearing has been done on purpose following a disagreement between the tenant and landlord regarding them not being allowed a cat at the property, in any case she can see that this is not fair wear and tear! In this case the clerk may charge for the cost of the floor covering minus 18 months of the life expectancy.

So:

Original cost £169

Expected life span 10 years

169 divided by 10 = £16.90 per year

18 months = £25.35

£169-£16.90 =£152.10 to be claimed from deposit.

MOULD, MILDEW, CONDENSATION AND DAMP AND CLEANING

Before deciding a case, the clerk must decide whether these issues have been caused by the tenant drying laundry inside the house. If it is suspected that this has occurred, then the clerk must assess if other adequate drying facilities were supplied by the landlord.

The clerk must also assess whether the tenant has aired the property sufficiently to prevent the issues from occurring, a tenant cannot be expected to ventilate a property if there is no adequate ventilation.

Live mould is a cleaning issue, and as such is the tenant's responsibility. Any staining left behind following cleaning may be considered wear and tear – but only if there was no adequate ventilation to prevent the issues from occurring, and/or there were no adequate laundry drying facilities.

Whether the mould has formed by a tenant's neglect or insufficient venting/drying facilities, the tenant is still responsible for cleaning it off.

All soiling and stains to any degree on any part of a rental property, that were not there at the beginning of the tenancy, are the tenant's responsibility – **these are NOT fair wear and tear!**

Case Study 1:

A tenant has moved out and the clerk notices that there is a lot of staining from mildew around the windows in the bathroom, there was no issue at the start of the tenancy. The spores have been cleaned away, but the staining is very heavy. First the clerk checks that the windows open in the room. The windows open fine, and they open sufficiently to air the room without presenting a security risk, and so there is no reason for the mildew to have collected so badly. The landlord can claim for the mildew to be professionally removed/covered.

Case Study 2:

A tenant moves into a property and finds it to be dirty. The oven and kitchen are particularly bad. These issues were picked up by the clerk at inventory. When the tenant moves out, the kitchen is left unclean, and the oven is in a very poor state.

In this case, the landlord has no claim against the tenant's deposit.

PiMS Ltd recommend that every tenancy start following a professional clean (including oven). This will ensure that the landlord's property is looked after, and that any cleaning issues following a tenant's departure can be dealt with by deposit compensation and not cost the landlord!

FABRICS

CURTAINS, BLINDS, CARPETS AND UPHOLSTERY

PiMS Ltd recommend that all carpets and curtains be cleaned (at the Tenant's expense) after all tenancy's lasting 12 months or more. This can only be enforced if the items were professionally cleaned at the start of the tenancy, and the evidence of this recorded in the inventory. If the tenant leaves within the 12 months, then the cost should be divided by 12 and the tenant be charged in proportion to their stay. If the items are heavily soiled within 12 months, then the full fee should be charged, and the soiling evidenced at check out. If pets have been present, the full charge should be applied.

Case Study 1:

A landlord lets a property for 18 months to a tenant whom has been permitted to keep a cat in the house. At the end of the tenancy, the landlord expects the carpets and curtains to be professionally cleaned, and this is supported with the condition report in the original inventory.

The cost of cleaning the curtains and carpets is £245. The Landlord has the items cleaned after the tenant has moved out and is able to claim the whole £245 from the tenant's deposit, as he can evidence that the items were professionally cleaned at the start of the tenancy, and that the Tenant had not returned them as such.

Case Study 2:

A tenant leaves a property after 8 months. At the start of the tenancy the landlord had ensured that the carpets and curtains were professionally cleaned, and this was recorded in the inventory. The tenant refuses to have the items cleaned as she deems that they are not dirty, and she's only been there 8 months.

The Landlord can claim as follows:

Total cost of carpet and curtain cleaning £245

£245 divided by 12 = price per month £20.41

Length of stay = 8 months, so $8 \times £20.41 = £163.28$

The landlord can claim £163.28 from the tenant's deposit – this is because he can evidence that the items were supplied professionally cleaned, and although the tenant states that the items are clean (even the check out report may suggest that they look clean), but there will be dust and possibly bacteria present from everyday living.

APPLIANCES

Tenants are not responsible for charges to service an appliance, but they must keep them clean. Failure to keep an appliance clean can affect its lifespan, If an appliance fails due to normal wear and tear, then the tenant is not liable for charges. If an appliance fails within the expected manufacturers life span, and it was in good order at the start of the tenancy, but it is reported as broken to the landlord, then the landlord must examine its condition before deciding who should pay for it.

Case Study 1:

A landlord rents a property with white goods included. The Inventory evidences that the fridge-freezer is in good clean order, but the washing machine has soap waste in the drawer, and the seal is stained and dirty. Six months into the tenancy the washing machine begins to make funny noises and the clothes are not being fully spun.

In this case there is no reason to believe that this tenant has done anything to damage the machine, and there was evidence at the start of the tenancy that the machine had not been looked after in the past. The landlord will need to fund a replacement/repair.

Case Study 2:

A tenant moves into a property with a new fridge. After 3 years the tenant moves out, and the check out clerk notes that the door seal in the fridge is very dirty and torn. Two of the shelves have been cracked and the ice box lid has been removed.

The cost of the fridge new was £169.

The manufacturers life expectancy according to the internet is 5 years. So the fridge should have lasted another 2 years.

£169 divided by 5 (years) = 33.8

2 years of use lost by landlord due to tenant's neglect £67.60

The landlord can confidently claim £67.60 from the tenant's deposit.

GARDENS AND OUTSIDE AREAS

Usually the landlord will remain responsible for any trees and shrubs, as specialist knowledge may be needed to maintain them. PiMS Ltd recommend that a gardener be instructed and funded by the landlord to oversee the maintenance of these.

The Tenant is expected to mow lawns, maintain flower beds and keep them tidy and weed free, so that they can return the outside areas in the original condition at the end of the tenancy. The tenant cannot however be responsible for replacing plants that have expired their normal lifecycle. Areas of lawn damaged by a tenant's items being stood on them (including sheds and play equipment) be considered damage, as can excessive wear and tear.

Case Study 1:

At the end of the tenancy, the clerk finds that the rear garden is overgrown, with dead grass patches where the tenant had left an overturned trampoline. The Trampoline has been removed, but there is no sign that the grass will recover. The Clerk checks the inventory and can see that the original condition was very good, with grass neatly cut, borders maintained and weed free. The Landlord asks a professional gardener to quote to return the garden to its original condition.

The Gardeners quote includes cutting grass, treating weed growth and replacing turf to the area that the trampoline has damaged. He agrees also to replace the gate lock that has become rusted with age.

The gardener will need to provide the landlord with a fully itemised quote, so that the landlord can remove the total for the rusty lock, as this was a wear and tear issue. The landlord can then seek to recover the rest of the quoted works from the tenant's deposit, using the inventory and check out reports as evidence.

Case Study 2:

Following the departure of the tenant, the clerk is reporting on the condition of the outside areas. The gardens and pathways are found to be weed free, probably in better condition than when the

tenant checked in! upon entering the garage, the clerk finds that many of the tenant's furnishings have been left behind, with a note attached saying "sorry, my van broke down and I can't collect these items for a couple of weeks". The Landlord is worried, because he has a new tenant due to move in in two days' time.

The landlord in this case is permitted to remove the items to storage. PiMS Ltd recommend that the items are photographed and itemised in situ, and again in storage. The Landlord can recover costs relating to the professional itemisation, removal to storage, and storage from the tenant's deposit.

It is important to remember that the landlord expects his/her property to be looked after and managed well by their agent. Agents therefore should only use fully trained and qualified inventory and check out clerks, to ensure that they are giving their landlord value for money and ensuring that any potential deposit claims are reinforced with good independent evidential reports.

Tenants are also better protected by the agents use of independent specialists to conduct their inventory and check out.

Whilst an agent may be the best person to work out the deposit claim with the landlord, the evidence must be provided by a suitably qualified and accredited, independent industry professional for it to have credibility with Tenancy Deposit Services.

Always check that your agent will be using an independent specialist to conduct your inventory and check out.